

United States  
Circuit Court of Appeals

For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

CARSON ESTATE COMPANY,  
Respondent.

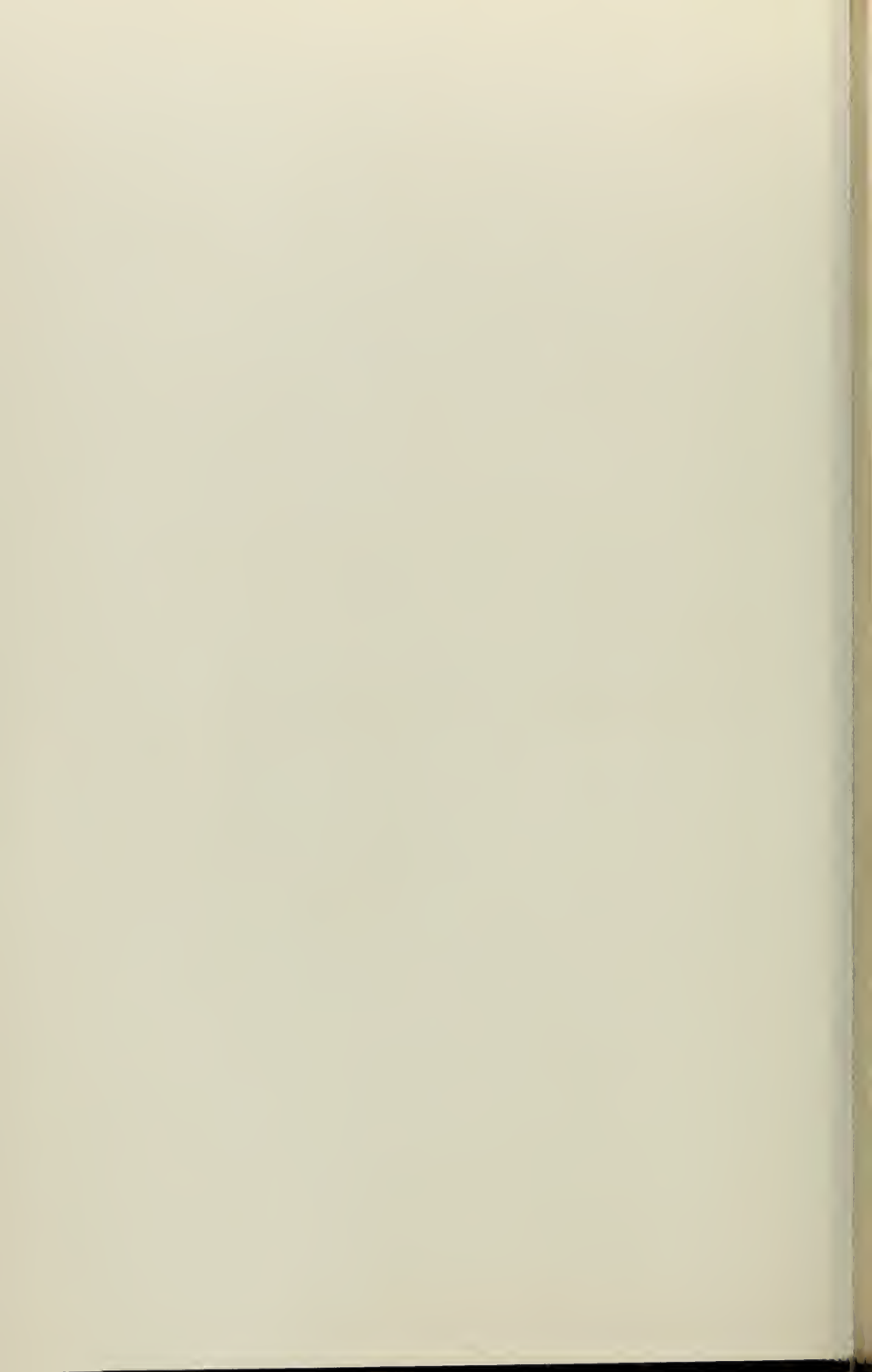
Transcript of Record

Upon Petition to Review an Order of the United States  
Board of Tax Appeals.

FILED

AUG 16 1935

PAUL P. O'BRIEN,  
CLERK



No. 7900

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**United States**  
**Circuit Court of Appeals**

*For the Ninth Circuit.*

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COMMISSIONER OF INTERNAL REVENUE,  
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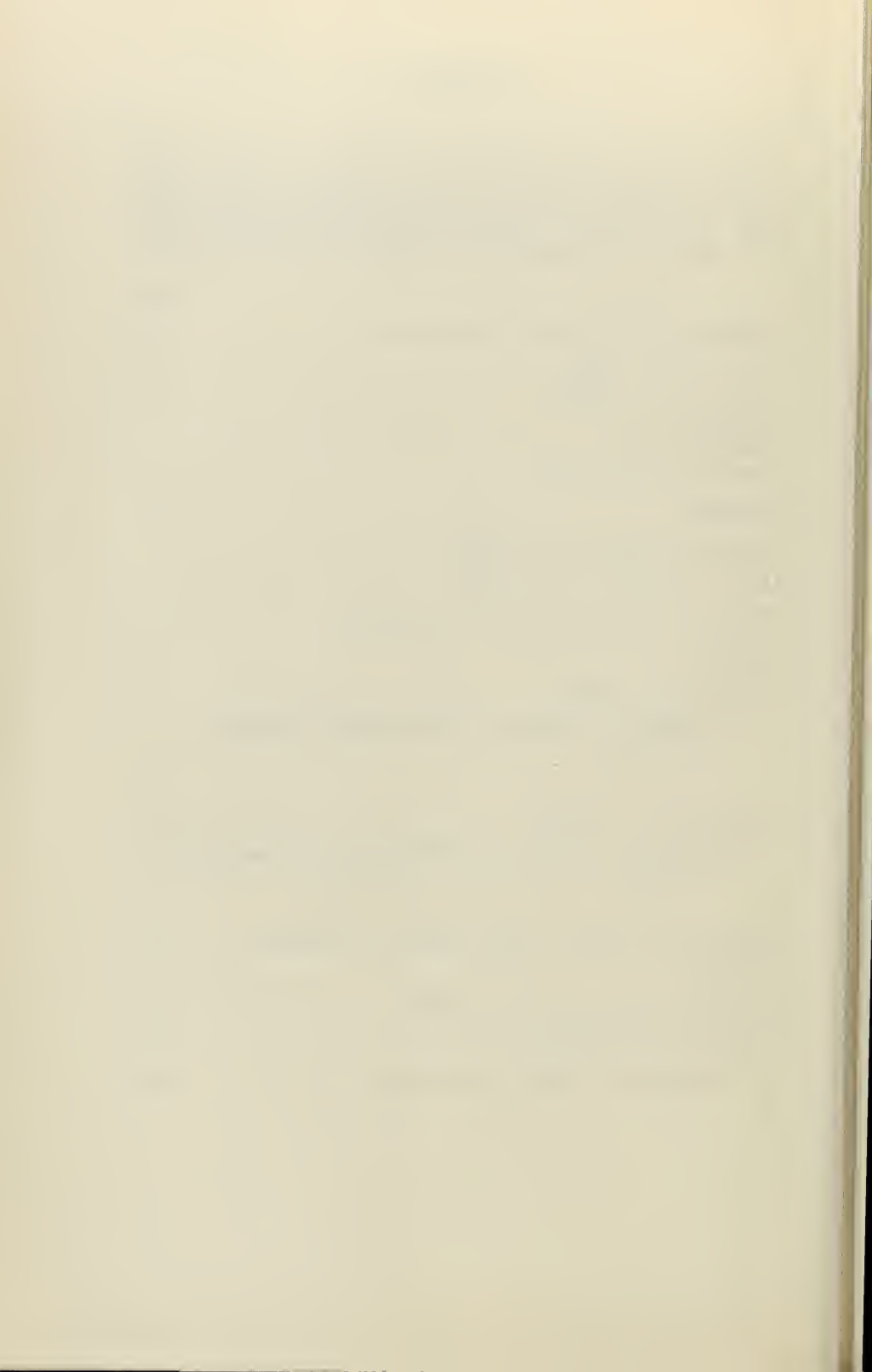
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES.

For Petitioner :

HARVEY J. STEVENSON, C.P.A.

JOSEPH D. BRADY, Esq.

For Commissioner :

C. C. HOLMES, Esq.

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Docket No. 47444

CARSON ESTATE COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## DOCKET ENTRIES.

1930

Feb. 10—Petition received and filed. Taxpayer notified. (Fee paid.)

Feb. 11—Copy of petition served on General Counsel.

Apr. 10—Answer filed by General Counsel.

Apr. 14—Copy of answer served on taxpayer, Circuit Calendar.

May 10—Stipulation of facts filed.

1933

July 12—Hearing set in Long Beach, California, beginning September 25, 1933.

Oct. 2—Hearing had before Mr. Van Fossan on merits, submitted, assigned to Mr. Leech,

Division 6, Stipulation of facts filed. Appearances of Joseph D. Brady filed October 3, 1933. Briefs due December 1, 1933.

## 1933

- Oct. 16—Transcript of hearing October 2, 1933, filed.
- Nov. 4—Brief filed by taxpayer.
- Nov. 28—Motion for extension to December 31, 1933, to file brief, filed by General Counsel. November 29, 1933, Granted to December 15, 1933, both parties.
- Dec. 15—Motion to consolidate with docket 53489, filed by General Counsel.
- Dec. 15—Brief filed by General Counsel.
- Dec. 19—Order consolidating dockets 47444 and 53489 for hearing, entered.

## 1934

- Nov. 15—Opinion rendered, Mr. Leech, Division 6. Decision will be entered under rule 50.
- Dec. 14—Notice of settlement filed by General Counsel.
- Dec. 18—Hearing set January 9, 1935, on settlement.
- Dec. 31—Consent to settlement filed by taxpayer.

## 1935

- Jan. 9—Decision entered, I. Russell Leech, Division 6.
- Mar. 25—Petition for review by U. S. Circuit Court of Appeals (9th Circuit) with assignments of error filed by General Counsel.



1935

- Apr. 8—Proof of service filed by General Counsel.  
Apr. 8—Affidavit of service of petition filed.  
May 14—Praecipe filed, proof of service thereon.  
May 23—Order enlarging time to June 17, 1935,  
for transmission and delivery of record  
entered.  
Jun. 13—Order enlarging time to July 15, 1935, for  
transmission and delivery of record en-  
tered. [1]\*

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Docket No. 53489.

CARSON ESTATE COMPANY, a Corporation,  
Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES.

1931

- Mar. 7—Petition received and filed. Taxpayer  
notified. Fee paid.  
Mar. 9—Copy of petition served on General  
Counsel.  
Mar. 27—Answer filed by General Counsel.  
April 3—Copy of answer served on taxpayer, Cir-  
cuit Calendar.

1933

- July 12—Hearing set for week of September 25,  
1933, Long Beach, California.

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\*Page numbering appearing at the foot of page of original certi-  
fied Transcript of Record.

1933

- Oct. 2—Hearing had before Mr. Van Fossan, Division 9, on the merits, submitted, assigned to Division 6, Mr. Leech. Stipulation of facts filed at hearing. Appearance of Joseph D. Brady filed October 3, 1933. Briefs due December 1, 1933.
- Oct. 16—Transcript of hearing October 2, 1933, filed.
- Nov. 4—Brief filed by taxpayer.
- Nov. 28—Motion for extension to December 31, 1933, to file brief, filed by General Counsel. November 29, 1933, granted to December 15, 1933, both parties.
- Dec. 15—Motion to consolidate with docket 47444, filed by General Counsel.
- Dec. 15—Brief filed by General Counsel.
- Dec. 19—Order to consolidate with docket 47444, entered.

1934

- Nov. 15—Opinion rendered, Mr. Leech, Division 6. Decision will be entered under rule 50.
- Dec. 14—Notice of settlement, filed by General Counsel.
- Dec. 18—Hearing set January 9, 1935, on settlement.
- Dec. 31—Consent to settlement, filed by taxpayer.

1935

- Jan. 9—Decision entered, Mr. Leech, Division 6.

1935

- Mar. 25—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.
- Apr. 8—Proof of service filed by G. C. (2).
- Apr. 8—Affidavit of service filed.
- May 14—Praecipe with proof of service thereon filed.
- May 23—Order enlarging time to June 17, 1935, for transmission and delivery of record entered.
- Jun. 13—Order enlarging time to July 15, 1935, for transmission and delivery of record entered. [2]

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United States Board of Tax Appeals

Docket Number 47444

CARSON ESTATE COMPANY, a corporation,  
Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION.

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated January 9, 1930 (Bureau Symbols IT:AR:C-4 CLG-6OD) and as a basis of its proceedings alleges as follows, to-wit:

1. The petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, and is transacting business therein, with its principal place of business in the City of Los Angeles, in said State of California, its mailing address being 1119 Bank of America Building, Los Angeles, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A"), was mailed to the petitioner January 9, 1930.

3. The taxes in question are income taxes for the calendar years 1926 and 1927, those for the calendar year 1926 being \$2,086.02, and those for the calendar year 1927 being \$1,780.08, a grand total of \$3,866.10.

4. The determination of tax set forth in the said notice of deficiency for the said calendar years 1926 and 1927 is based on the following errors:

(a) Petitioner has been erroneously taxed for the calendar year 1926 on interest received in the sum of \$9,624.01 on certificate of ownership in municipal bonds issued by the Municipal Bond Company.

(b) Petitioner has been erroneously taxed for the calendar year 1927 on interest received in the sum of \$10,327.50 on certificates of ownership in municipal bonds issued by the Municipal Bond Company. [3]

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner alleges that by virtue of its ownership of Certificates of Ownership in Municipal Bonds, issued by the Municipal Bond Company, it was the owner of a beneficial interest of municipal bonds in trust for the benefit of petitioner and therefore the interest in question was interest received from municipal bonds and accordingly tax exempt.

(b) The petitioner alleges that by virtue of its ownership of Certificates of Ownership in Municipal Bonds issued by the Municipal Bond Company, it was the owner of a beneficial interest of municipal bonds in trust for the benefit of petitioner and therefore the interest in question was interest received from municipal bonds and accordingly tax exempt.

6. Your petitioner prays for relief from the deficiencies asserted by the respondent for the calendar years 1926 and 1927 as alleged herein with respect to the addition of \$9,624.01 and \$10,327.50 to taxable income of petitioner for the respective years.

WHEREFORE, the petitioner prays that this Board may hear and redetermine the deficiency herein alleged.

HARVEY STEVENSON,  
Counsel for Petitioner, 821 Security Bldg., Los  
Angeles, California.

State of California,  
County of Los Angeles.—ss.

H. H. COTTON hereby duly sworn says: that he is the Secretary of Carson Estate Company, the



petitioner herein, and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

H. H. COTTON

Subscribed and sworn to before me this 30th day of January, 1930.

[Seal]

MARGUERITE McDONALD

Notary Public in and for the County of Los Angeles, State of California. [4]

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EXHIBIT A.

Treasury Department  
Washington, Jan. 9, 1930.

IT:AR:G-4  
CLG-60D

Carson Estate Company, Incorporated,  
c/o Harvey J. Stevenson,  
Security Building,  
Los Angeles, California

Sirs:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the years 1926 and 1927 discloses a deficiency of \$3,866.10, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; **WHEREAS IF NO AGREEMENT IS FILED,** interest will accumulate to the date of assessment of the deficiencies.

Respectfully

ROBT. H. LUCAS

Commissioner

By DAVID BURNET

Deputy Commissioner

EED-1

Inclosures L

Statement

Form 866

Form 882 [5]

## STATEMENT.

IT:AR:C-4

CLG-60D

In re: Carson Estate Company, Incorporated

c/o Harvey J. Stevenson,  
 Security Building,  
 Los Angeles, California.

## Tax Liability.

Years	Corrected Tax Liability	Tax Previously Assessed	Deficiency
1926	\$ 2,459.62	\$ 373.60	\$2,068.02
1927	12,422.85	10,642.87	1,780.08
	<hr/>	<hr/>	<hr/>
Totals	\$14,882.57	\$11,016.47	\$3,866.10

Reference is made to the report of the Internal Revenue Agent in Charge, San Francisco, California, and to your protests submitted under dates of March 4, April 15 and October 29, 1929.

Careful consideration has been accorded your protests in connection with the agent's findings and the report on the conference held with your representatives on April 26, 1929, in the office of the Agent in Charge.

With respect to land valuation of acreage, acquired in 1914 and sold during 1926 and 1927, the following values are considered reasonable:



Acreage	Value per Acre
16.913 acres (Alexander Allotment)	\$800.00
34.71 acres (Rancho-San-Pedro)	\$700.00
11.8 acres (Rancho-San Pedro)	\$700.00
8.37 acres (Dominguez Colony Tract, Parcels 3, 4 and 5)	\$500.00

Your contention regarding exclusion from gross income of interest received on certificates of ownership in municipal bonds of the Municipal Band Company has been given further consideration and cannot be conceded for the reason that the certificates issued are obligations of the Municipal Bond Company and any interest received by a holder of such certificate is subject to Federal income tax. Reference, General Counsel Memorandum 1451, Cumulative Bulletin VI-1, Page 29. [6]

1926

Net Income reported		\$ 2,557.21
Add:		
1. Interest	\$9,624.01	
2. Excessive depletion	958.68	
3. Understatement of profit on sale of Lot 43	137.50	
4. Loss on sale of acreage	6,942.00	17,662.19
Net income as adjusted		<u>\$20,219.40</u>

## Explanation of Changes.

1. Interest received by the corporation on certificates of ownership in municipal bonds of the Municipal Bond Company is taxable income. Reference, General Counsel, Memorandum 1451 Cumulative Bulletin VI-1, page 29.

2. The allowance for depletion has been computed under Section 204 (c) (2) of the Revenue Act of 1926 as follows:

Gross income from oil wells	\$3,840.05
Allowable depletion:	
27½% of gross income	\$1,056.01
Depletion deducted on return	2,014.69
	<hr/>
Excessive depletion	\$ 958.68

3. Profit on sale of Lot 43 of Tract 4054 has been computed as follows. Reference, Article 1561, Regulations 69.

Sale Price	\$7,500.00
Cost of Lot	3,781.00
	<hr/>
Profit on sale	\$3,719.00
Profit reported on return	3,581.50
	<hr/>
Difference	\$ 137.50

4. Loss on the sale of 34.71 acres Rancho-San Pedro has been computed in accordance with Article 1561, Regulations 69. A value of \$700.00 an acre as of 1914 has been placed on this land. [7]

Selling price, 34.71 acres	\$13,884.00
Cost (34.71 @ \$700.00 an acre)	24,297.00
	<hr/>
Loss on sale	\$10,413.00
Loss reported on return	17,355.00
	<hr/>
Overstatement	\$ 6,942.00

Computation of Tax

Net income as adjusted	\$20,219.40
Less:	
Credit	2,000.00
	<hr/>
Balance subject to tax	\$18,219.40
Income tax at 13½%	\$ 2,459.62
Tax previously assessed	373.60
	<hr/>
Deficiency in tax	\$ 2,086.02

1927

Net income reported	\$78,836.04
Add:	
1. Interest	\$10,327.50
2. Excessive depletion	490.29
3. Profit on sale of land	2,360.00
4. Sale of lots 44 and 45	8.02
	<hr/>
Net income adjusted	\$92,021.85

Explanation of Changes

1. See explanation #1 adjustment to income 1926.
2. See explanation #2 adjustment to income for 1926.

Gross income from oil wells	\$ 2,244.60
27½% of gross income	617.27
Depletion claimed on return	1,107.56

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Excessive depletion \$ 490.29

3. See explanation #4 adjustment to income for 1926. [8]

Selling price 11.8 acres Rancho San Pedro	\$47,200.00
Cost of 11.8 acres @ \$700.00 per acre	8,260.00

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Profit on sale	\$38,940.00
Profit reported on return	36,580.00

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Difference \$ 2,360.00

4. Profits on sale of Lots 44 and 45 Tract 4054 is computed as follows: Articles 1561, Regulations 69. A value of \$600.00 an acre is allowed on this property which was acquired by the corporation in 1914.

Selling price	\$ 1,749.09
Cost of property	218.97

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Profit on sale	\$ 1,530.12
Profit reported	1,522.10

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Difference \$ 8.02

#### Computation of Tax

Net income as adjusted	\$92,021.85
Income tax at 13½%	\$12,422.95
Tax previously assessed	10,642.87

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Deficiency in tax \$ 1,780.08

Your claim for refund of \$298.38 for 1926 will be rejected as the tax liability for 1926 is in excess of the amount previously assessed. The rejection will appear on a schedule to be approved by the Commissioner.

A copy of this communication has been furnished your representative, Mr. Harvey J. Stevenson, 401 Security Building, Los Angeles, California.

[Endorsed]: Filed Feb. 10, 1930. [9]

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[Title of Court and Cause—Docket No. 47444.]

ANSWER.

Comes now the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition herein.
2. Admits the allegations contained in paragraph 2 of the petition herein.
3. Admits that the taxes in controversy are income taxes for the calendar years 1926 and 1927, but denies that the amounts in controversy are the amounts stated in paragraph 3 of the petition herein.
4. Denies that the respondent erred in the manner alleged in paragraph 4 of the petition herein.
5. Denies the allegations contained in paragraph 5 of the petition herein. [10]

Denies generally and specifically each and every allegation contained in the petition herein not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that petitioner's appeal be denied.

(Signed) C. M. CHAREST,  
General Counsel, Bureau of Internal Revenue.

OF COUNSEL:

BROOKS FULLERTON,  
Special Attorney  
Bureau of Internal Revenue.

FJK/amm

[Endorsed]: Filed Apr. 10, 1930. [11]

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[Title of Court and Cause—Docket No. 53489.]

PETITION.

The above-named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated January 28, 1931 (Bureau Symbols IT:AR:E-3 JAH-60D) and as a basis of its proceeding alleges as follows, to-wit:

1. The petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, and is transacting business therein, with its principal place of business in the City of Los Angeles, in said State of California, its mailing address being 1119 Bank of America Building, Los Angeles, California.



2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on January 28, 1931.

3. The taxes in controversy are income taxes for the calendar year 1928 in the sum of \$1,815.31.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

(a) Petitioner has been erroneously taxed for the calendar year 1928 on interest received in the sum of \$12,127.51 on certificates of ownership in municipal bonds issued by the Municipal Bond Company. [12]

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner alleges that by virtue of its ownership of Certificates of Ownership in Municipal Bonds, issued by the Municipal Bond Company, it was the owner of a beneficial interest of municipal bonds in trust for the benefit of petitioner and therefore the interest in question was interest received from municipal bonds and therefore tax exempt.

6. Your petitioner prays for entire relief from the deficiency asserted by the respondent for the calendar year 1928 as alleged herein.

WHEREFORE the petitioner prays that this Board may hear and redetermine the deficiency herein alleged.

HARVEY STEVENSON

Counsel for Petitioner, 820 Security Building,  
Los Angeles, California.

State of California,  
County of Los Angeles.—ss.

H. H. COTTON hereby duly sworn says: that he is the Secretary of Carson Estate Company, the petitioner herein, and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the facts stated are true except to the facts stated upon information and belief, and those facts he believes to be true.

[Seal] H. H. COTTON

Subscribed and sworn to before me this 28th day of February, 1931.

[Seal] MARGUERITE McDONALD

Notary Public in and for the County of Los Angeles, State of California. [13]

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EXHIBIT "A".

NP-2-28

Treasury Department  
Washington

Jan 28, 1931

Office of  
Commissioner of Internal Revenue  
Carson Estate Company,  
c/o Harvey J. Stevenson,  
Security Building,  
Los Angeles, California

Sirs:

You are advised that the determination of your



tax liability for the year 1928 discloses a deficiency of \$1,815.31 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D.C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of the deficiency.

Respectfully

DAVID BURNET,  
Commissioner  
By W. T. SHERWOOD  
Acting Deputy Commissioner

Enclosures:

Statement  
Form 882  
Form 870 [14]

## STATEMENT.

IT:AR:E-3

HAJ-60D

In re: Carson Estate Company,  
c/o Harvey J. Stevenson,  
Security Building,  
Los Angeles, California.

## Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1928	\$3,563.02	\$1,747.71	\$1,815.31

The report submitted by the internal revenue agent in charge, Los Angeles, California, covering an examination of your books of account and records for the year 1928, has been reviewed and the findings set forth therein approved.

Your contention relative to nontaxability of interest received on "Convertible Certificates of Ownership" issued by the Municipal Bond Company of Los Angeles, California, cannot be conceded.

Under the provisions of General Counsel's Memorandum number 1451, published in Cumulative Bulletin VI-I, page 29, it is held that the certificates involved represent obligations of the Municipal Bond Company and any interest received by a holder of such certificates is subject to Federal income tax.

Net Income

Net income reported on return	\$17,564.29
Add:	
1. Interest from Municipal Bond Company	12,127.51
	\$29,691.80
Net income as adjusted	\$29,691.80

Explanation of Adjustment

1. See statement above [15]

Computation of Tax

Net income	\$29,691.80
Less:	
Exemption	None
	\$29,691.80
Amount taxable at 12%	\$29,691.80
Tax at 12%	\$ 3,563.02
Tax previously assessed	1,747.71
	\$ 1,815.31
Deficiency	\$ 1,815.31

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1928 the Bureau will be unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 and/or article 451 of Regulations 75 to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926 and/or section 272(a) of the Revenue Act of

1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

[Endorsed]: Filed March 7, 1931. [16]

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[Title of Court and Cause.]

[Title of Court and Cause—Docket No. 53489.]

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1. Admits the allegations contained in paragraph 1.

2. Admits the allegations contained in paragraph 2.

3. Admits the allegations contained in paragraph 3.

4. Denies that the Commissioner committed the errors alleged in paragraph 4.

5. Denies the allegations contained in paragraph 5.

Denies, generally and specifically, each and every allegation contained in taxpayer's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

SBA/mhk 3/25/31.

(Signed) C. M. CHAREST  
General Counsel, Bureau of Internal Revenue.

Of Counsel:

ARTHUR CARNDUFF,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: Filed Mar. 27, 1931. [17]

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United States Board of Tax Appeals.

Docket Nos. 47444, 53489.

CARSON ESTATE COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated November 15, 1934.

Where a corporation issued to petitioner certificates of ownership purporting to evidence a sale of the corporation's title and interest, to a specified extent, in municipal bonds, the interest on which was exempt from income tax, deposited with a trustee under a trust agreement, which instruments, construed as a whole, indicated a transfer of beneficial ownership in the bonds was intended and effected, and not a loan, held, that

petitioner became the beneficial owner of such bonds, and the interest it received, through the trustee, was in payment of interest on those bonds and therefore exempt from Federal income tax.

Harvey J. Stevenson, C.P.A. and Joseph D. Brady, Esq., for the petitioner.

Clay C. Holmes, Esq., for the respondent.

### OPINION.

LEECH: These consolidated proceedings seek redetermination of income tax deficiencies in the amounts of \$2,086.02 for the year 1926, \$1,780.08 for the year 1927, and \$1,815.31 for the year 1928. The total deficiencies for 1926 and 1927 are not in controversy.

The facts are stipulated. A rather full resume of them follows:

Petitioner is a California corporation. It acquired certain certificates of ownership from Municipal Bond Co., hereinafter referred to as the corporation.

The form of ownership certificate issued by the corporation provides that the corporation "does hereby sell and transfer to the purchaser of this certificate all of its rights, title and interest in Municipal Improvement Bonds issued under the special assessment laws of the State of California", of a specified unpaid face value; that the corporation certifies that such bonds and other like bonds are deposited with a named trustee to hold the same under



a trust agreement made a part of the certificate as though incorporated therein; that the bearer or registered holder of the certificate "is entitled [18] to participate in the proceeds and avails of such bonds, so deposited, to the extent of the principal sum of ..... Dollars, payable from such proceeds and avails on the ..... day of ..... 19...., with interest on said sum from the date hereof at the rate of ..... Per Cent (...%) per annum, payable semi-annually on the first days of ..... and ..... in each year upon surrender of the coupons hereto attached, as they severally mature"; that the owner of the certificate "is entitled at any time upon demand and surrender of this certificate, together with its unmatu- red coupons, to said trustee, to receive bonds of unpaid face value equal to the principal sum herein mentioned, the accrued interest to be adjusted as of date of delivery on both this certificate and the bonds so delivered"; that the certificate owner "releases and waives" all interest or other sums collected by the trustee upon such bonds, in excess of the principal sum and interest at the rate specified in the certificate. The corporation has deposited with the trustee, unpaid face value bonds equal to 110 percent of the principal sum stated in the certificate, "for the purpose of better securing the distribution of the proceeds and avails of such bonds"; that the corporation covenants "that the principal and interest to become due upon said bonds, when and as the same matures, will be paid, such covenant to continue as long as such bonds remain on deposit with said

Trustee." The form of the coupon attached to the certificate provides that the certificate owner "IS ENTITLED to RECEIVE ..... Dollars from the avails of Bonds on deposit with said Bank in Trust No. ...., according to the terms of such Trust, and the Undersigned (the corporation) covenants that the avails from such Bonds will be paid." The form of the trustee's certificate provides that "The undersigned hereby certifies that the within certificate and coupons attached, is one of the certificates executed by Municipal Bond Company under an Agreement of Trust with this Corporation, dated .....'" and further, that there has been deposited with it, bonds of the designated character and of the unpaid face value of 110 percent of the principal sum stated in the certificate.

The trust agreement sets out that the corporation desires to sell municipal improvement bonds which it owns or may acquire; that such bonds vary in amounts and dates of maturity; that the corporation, instead of selling specified bonds, desires to sell to the purchaser an interest in such bonds in even sums such as \$100 or multiples thereof, and reinvesting for such purchaser the principal of such bonds as they mature to the end that the purchaser shall have his money invested in such bonds for a definite period such as five or ten years; that to accomplish such purpose, the corporation desires to deposit such bonds with the trustee "for the use and benefit [19] of such person as may purchase an interest therein"; that the corporation desires to issue



the above-mentioned certificates of ownership to such purchasers; and, further, that "in consideration of the premises, the said Trustee hereby agrees to accept from said Corporation, such bonds and to hold the same for the benefit of the holders of such certificates, in trust upon the terms and conditions and for the purposes herein set forth." The terms and conditions of the trust, the duties and obligations of the trustee and the corporation, and also the rights of the parties, including the purchaser, are set forth in great detail. Article II provides for the deposit of bonds with the trustee and section 3 thereof provides, "said Corporation shall transfer, assign and set over to said Trustee the absolute title to said bonds, to hold in accordance with the provisions of this Trust Agreement, and shall execute any and all transfers, assignments or other instruments necessary to pass the title in said bonds to said Trustee." Article III provides that the corporation may withdraw any of the bonds upon delivery to the trustee of an equal amount of unpaid face value of bonds of the same character, provided the aggregate interest on the substituted bonds shall equal or exceed the interest specified in the certificates. Article IV provides that the trustee shall collect or cause to be collected, interest on the bonds for the benefit of the trust; that the corporation agrees to purchase for cash at face value any interest coupons due and uncollected; that the trustee shall sell to the corporation all installment coupons of principal falling due and maturing serial bonds, for which the corpora-

tions agrees to deliver to the trustee other bonds of the same character of an unpaid face value equal to the coupons and maturing bonds, such other bonds to be held for the benefit of the certificate holders; and that the purpose and intent is that trustee shall collect the interest accruing on all bonds for the benefit of the trust and as the bonds mature the principal to be immediately reinvested in like bonds for the benefit of the trust. Article V provides that out of moneys received from the collection or sale of interest coupons on the municipal bonds, the trustee shall pay to the certificate owners the interest specified therein and, after deducting the trustee's charges, pay the excess to the corporation as income on the excess 10 percent of bonds deposited and as compensation to the corporation for selling ownership certificates and collecting interest and principal for the trustee. The corporation is entitled to any bonus or penalty received by the trustee upon payment of any bond. Articles VI and VII provide for the payment of the principal sum stated in the ownership certificate, prior to maturity upon demand, by delivery to certificate holder of specific bonds, selected by the trustee, or at maturity by cash or unpaid bonds at [20] the election of the certificate owner. The corporation agrees to repurchase bonds, at their unpaid face value, and equal to the face value of maturing certificates, at the maturity of the latter, with the proceeds of which sales to the corporation, the maturing certificates are to be paid. Article VIII, section 1, provides, "It is the intention

of the parties hereto that the delivery to the purchaser thereof of a certified certificate, vests in the holder of such certificate the ownership of an amount in unpaid face value bonds, equal to the par value of the certificate, subject to the implied agreement on the part of the purchaser of such certificate by the acceptance thereof, to allow the said bonds to remain in the hands of the Trustee for collection under the terms and conditions of this Trust, and also subject to the release and waiver by the holder thereof of all interest, bonuses, penalties or other sums collected by the Trustee upon the bonds so deposited with the Trustee, in excess of the principal sum mentioned in such certificate and the interest on such principal sum at the rate specified in said certificate." Article IX provides that the certificates of ownership may be transferred, and also provides for the registration of such certificates. Article X provides that the corporation in joining in the execution of the trust agreement, warrants that the bonds deposited with the trustee are legal, valid and subsisting obligations, and that the installments of principal and interest specified in each bond will be paid as and when the same mature. Article XI sets forth the responsibility of the trustee under the terms of the trust, and Article XII fixes the amount of the trustee's fees.

The petitioner received "interest income" pursuant to and in accordance with the terms and provisions of the above mentioned ownership certificates at the rate of 6 percent per annum, payable semi-annually as follows :

Calendar year 1926	\$9,624.01
Calendar year 1927	10,327.50
Calendar year 1928	12,127.51

During the taxable years here in controversy none of the "interest income" here involved flowed to petitioner by reason of any of the warranties or covenants of Municipal Bond Co. or from bonds bearing an interest rate of less than 7 percent.

All of the bonds which were deposited in the trust provided for in the above trust agreement were municipal improvement bonds, issued under special assessment laws of the State of California. The interest on these bonds was not subject to Federal income tax.

In its returns filed for the calendar years 1926, 1927, and 1928, petitioner treated the above amounts as interest received from municipal bonds and reported it as tax exempt. [21]

Respondent restored the amounts in controversy to taxable income on the ground that such amounts constituted interest on obligations of the Municipal Bond Co. and not interest on tax exempt securities.

Thus, the only issue is whether the petitioner's acquisition of the certificates of ownership constituted a sale to it by the corporation of the beneficial ownership in municipal bonds, the interest on which is admittedly exempt from income tax, or was a loan by petitioner to the corporation, and the "interest income" thus received by petitioner as interest on the obligation of the corporation, and subject to that tax. This question is answered by the intention of

the parties to the transaction evidenced by the "certificates of ownership" and the "trust agreement" made part thereof, construed as a whole (*Heryford v. Davis*, 102 U. S. 225), together with the actual treatment of the transaction by the parties thereto. *First National Bank in Wichita v. Commissioner*, 57 Fed. (2d) 7, affirming 19 B. T. A. 744; certiorari denied, 287 U. S. 636; *Bank of California, National Association*, 30 B. T. A. 556. Since it is stipulated that the disputed "interest income" was received in accordance with the terms of the certificates of ownership, which incorporated the "trust agreement" therein, we are concerned here only with the proper construction of those instruments. Cf. *Frank Turner*, 28 B. T. A. 91.

Undoubtedly the "certificate of ownership" on its face purports to "sell and transfer to the purchaser of this certificate all of its rights, title and interest in the Municipal Improvement Bonds", deposited with the trustee under the "trust agreement" made a part thereof. That agreement contains all the essentials of a valid irrevocable declaration of trust. In unmistakable terms, it states that "It is the intention of the parties hereto that the delivery to the purchaser thereof of a certified certificate, vests in the holder of such certificate ownership of an amount in unpaid face value bonds equal to the par value of the certificate", subject to the conditions of the agreement.

Respondent argues that the qualifications attached to this purported transfer of beneficial ownership, in



the express and implied conditions of these instruments, are inconsistent with the transfer of any interest in the municipal bonds by the corporation to petitioner, and characterize the transaction as a loan from petitioner to the corporation, secured by a lien on escrowed guaranteed municipal bonds.

The absence of control by petitioner over the deposited bonds was a natural and not peculiar incident of a valid trust. Nor was the conditional right of the corporation to substitute bonds with the trustee inconsistent with such a trust. *Campbell v. Campbell*, 207 Ky. 17; 268 S. W. 588; *Leland v. Colver*, 34 Mich. 318; *S. A. Lynch*, [22] 23 B. T. A. 435. The spread between the interest rate on the deposited bonds and that of the certificates of ownership, while of some possible significance, is certainly not controlling (cf. *First National Bank in Wichita v. Commissioner*, *supra*, and *Bank of California, National Association*, *supra*), particularly since the certificate rated was not the legal loan rate. Sec. 1, Act No. 3757 of the State of California, approved Nov. 5, 1918.

The corporation's repurchase agreement did not invalidate the trust by making incomplete the otherwise completed transfer, nor did it divest the ownership then conveyed. *Lyons v. Snider*, 136 Minn. 252; 161 N. W. 532; *Paulson v. Weeks*, 80 Or. 468; 157 Pac. 590. Although the fact that the repurchase price was par value, which was the basis upon which petitioner purchased, has been considered as some, though not compelling, indication of a loan (cf. *First National Bank in Wichita v. Commissioner*,

supra, and Bank of California, National Association, supra), it has been held to evidence the transfer of an entire interest and thus imply sale. *Chase & Baker Co. v. National Trust & Credit Co.* (Dist. Ct., N. Dist. Ill.), 215 Fed. 633.

The warranty of the deposited bonds and the interest payable thereon, with the auxiliary 10 per cent excess deposit of bonds, is at least equally consistent with an intended separate contract from that of sale or transfer in trust, as it is with a loan secured by guaranteed collateral. *Chase & Baker Co. v. National Trust & Credit Co.*, supra.

The corporation's right to any premiums or penalties on the deposited bonds, said to be evidential of its failure to transfer beneficial ownership therein, loses its value in the presence of petitioner's right upon its demand to specific bonds, and thus to secure such profit. This right of petitioner, while possible of construction as an option if the transaction under consideration were a loan, is just as consistent with a condition terminating the trust as to petitioner if the transaction was a sale of a beneficial interest. *Cary v. Slead*, 220 Ill. 508; 77 N. E. 234; *Tuck v. Knapp*, 85 N. Y. S. 1001; 42 Misc. Rep. 140; *In re Ames*, 22 R. I. 54; 46 Atl. 47. Nor is that consistency lost by the mandatory selection by the trustee of bonds to satisfy such demand as the class for which the selection is to be made, is certain. *In re Dewey's Estate*, 45 Utah 98; 143 Pac. 124.

A beneficial interest in the deposited bonds in the corporation, to the extent of the excess deposited,

the premiums and penalties to be received on the bonds and the difference in interest received on the bonds and that paid on the certificates, and the remaining beneficial ownership in the deposited bonds in petitioner, is likewise consistent with a valid trust. Certainly the creator of a trust may also be a [23] beneficiary thereof, either alone or jointly. Reginald Brooks, 31 B. T. A. 70; Iola Wise Stetson, 26 B. T. A. 390; 27 B. T. A. 173.

The argument that if a valid trust was created it was "in the avails of the bonds" and not the bonds themselves, is of little, if any weight, generally, in itself, and fails here particularly because upon termination of the trust as to petitioner it had the right to demand specific bonds. This right at maturity, as well as its alternative, the right to the "avails of the bonds" at the full par value of the certificate of ownership, contradicts the deposit of bonds as a mere escrow transfer to secure a primary obligation of the corporation. Cf. Frank Turner, *supra*; Frank P. Welch, 12 B. T. A. 800.

In short, the "certificate of ownership" and "trust agreement" disclose nothing inconsistent with the stated intention of creating an irrevocable trust in municipal bonds and selling the beneficial ownership thereof. Neither document contains any primary obligation of the corporation to petitioner, certificate holder. The only obligation of the corporation was its secondary liability on its covenant of warranty, from which none of the questioned amounts flowed. The necessary complement of re-



spondent's present position would permit the pending disputed exemption to the corporation—certainly a difficult result to sustain.

Then again, and of emphatic if not compelling persuasion here, we have the uncontradicted background and purpose of the transaction.

This record contains no history or suggestion branding the corporation as at any time a borrower and petitioner as a lender. It indicates only that they were seller and purchaser. Cf. *First National Bank in Wichita v. Commissioner*, *supra*; *Bank of California, National Association*, *supra*; *Frank Turner*, *supra*.

The business of the corporation was the sale of these municipal bonds of odd face value and maturities. The present uncontradicted purpose of increasing the marketability of such bonds by eliminating these unfavorable features and the means chosen to effect it, are both credible and legal. Cf. *Reginald Brooks*, *supra*.

We conclude that the corporation created a valid irrevocable trust in municipal bonds, the interest on which, admittedly exempt from income tax, constituted its only income; that petitioner was a beneficial owner of those bonds and received the controverted "interest income" as such, thereon, free from income tax. Cf. *Norfolk National Bank of Commerce & Trusts v. Commissioner*, 56 Fed. (2d) 48; reversing 26 B. T. A. 1111.

Reviewed by the Board.

Decision will be entered under Rule 50.

[Seal] [24]

United States Board of Tax Appeals.  
Washington.

Docket Nos. 47444, 53489.

CARSON ESTATE COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION.

Pursuant to the Opinion of the Board promulgated November 15, 1934, the respondent herein having filed on December 14, 1934, notices of settlement and proposed recomputations and the petitioner on December 31, 1934, having acquiesced in the recomputations as made by the respondent, now therefore, it is

ORDERED AND DECIDED that there are deficiencies in income taxes for the year 1926 in the amount of \$786.78; for the year 1927 in the amount of \$385.87; and there is no deficiency for the year 1928.

Enter: Jan. 9, 1935.

[Seal] (Signed) J. RUSSELL LEECH,

Member. [25]

[Title of Court and Cause—Docket No. 47444.]

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto:

That the name of the petitioner corporation is the Carson Estate Company, that petitioner filed its income tax returns, bearing the corporate seal for the calendar year 1926, on March 15, 1927 (and the amended return for that year on March 28, 1928) and for the calendar year 1927 on March 15, 1928.

That a deficiency notice (bearing symbols IT:AR:C-4-CLG-60D) in respect of said years was mailed January 9, 1930, addressed to Carson Estate Company, Incorporated, c/o Harvey J. Stevenson, Securities Building, Los Angeles, California.

That the petition on appeal from the determination in such deficiency notice, is the name of Carson Estate Company, a Corporation.

That the petitioner is a corporation, created in 1914, and no reorganization or other change in the corporate entity has occurred since incorporation.

That the deficiency notice was received by petitioner and that Carson Estate Company, a corporation, as shown by the tax returns and the petition in this appeal, is the same corporate and taxable entity as Carson Estate Company, Incorporated, shown by the said deficiency notice, and that said [26] deficiency notice was received by said corporate entity and that the appeal of Carson Estate

Company, a corporation, is from the determination of tax liability set out in said deficiency notice.

(Sgd) HARVEY J. STEVENSON,  
Counsel for Petitioner.

(Signed) C. M. CHAREST,  
General Counsel, Bureau of Internal Revenue,  
Counsel for Respondent.

[Endorsed]: Filed May 10, 1930. [27]

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[Title of Court and Cause.]

#### STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the above parties through their respective attorneys of record that the following facts are true and that the case shall stand submitted on these agreed facts without other testimony by either party:

1. Petitioner is a California corporation organized January, 1914, under the laws of the State of California, and for the years in controversy duly filed its income tax returns with the Collector of Internal Revenue for the Sixth District, Los Angeles, California.

2. The petitioner received interest income pursuant to and in accordance with the terms and provisions of certain Ownership Certificates issued by Municipal Bond Company during the periods and in the amounts as shown below, said interest being

at the rate of six per cent. per annum, payable semi-annually:

Calendar year 1926	\$ 9,624.01
“ “ 1927	10,327.50
“ “ 1928	12,127.51

3. That Exhibit “A” hereto annexed is a true and correct copy of the form of Ownership Certificate above referred to and of the form of Trust Agreement referred to in said Certificate.

4. That during the taxable years here in controversy none of the interest income here involved flowed to petitioner by reason of any of the warranties or covenants of Municipal Bond Company or from bonds bearing an interest rate of less than seven per cent.

5. That all of the bonds which were deposited in the trust pro- [28] vided for in said Trust Agreement were municipal improvement bonds, issued under special assessment laws of the State of California; and it is conceded by respondent that the interest on said bonds was not subject to the federal income tax.

6. In its returns filed for the calendar years 1926, 1927 and 1928, petitioner treated the above amounts as interest received from municipal bonds and reported it as tax exempt.

7. Respondent restored the amounts in controversy to taxable income on the ground that such amounts constituted interest on obligations of the



Municipal Bond Company and not interest on tax exempt securities.

October 2nd, 1933.

(Sgd) HARVEY J. STEVENSON,  
Counsel for Petitioner.

(Sgd) E. BARRETT PRETTYMAN,  
General Counsel, Bureau of Internal Revenue,  
Attorney for Respondent. [29]

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EXHIBIT A.

Trust Agreement.

THIS AGREEMENT, made and entered into this ..... day of ....., 19.... between ....., first party, ....., and ..... second party, hereinafter referred to as the "Trustee,"

Witnesseth:

WHEREAS, said Corporation is desirous of selling Municipal Improvement Bonds, issued under special assessment laws of the State of California, (hereinafter referred to as "Bonds"), which it now owns or which it may hereafter acquire; and

WHEREAS, said bonds are in varying amounts and are rarely in denominations of an even sum, such as \$100, \$500, or \$1000, and some of such bonds have different maturities, or mature serially, and some of their terms provide for the payment of one-tenth of the original principal thereof on the second day of January in each year, all of which bonds



provide for the payment of interest on the unpaid principal, payable semi-annually on the second days of January and July in each year; and

WHEREAS, said Corporation, instead of selling to a purchaser certain specific bonds, is desirous of selling to such purchaser, an interest in such bonds, in even sums, such as \$100, \$500, or \$1000, and reinvesting for such purchaser the principal of such bonds, or annual installments thereof, as and when the same matures and is paid, in other like bonds, to the end that the said purchaser shall have his money invested in such bonds for a definite period of time, such as five years or ten years; and

WHEREAS, in order to accomplish said purpose and to assure to such purchaser the continuous investment for a definite period of the amount invested by him in the purchase of such bonds, the said Corporation is desirous of depositing such bonds now owned by it or which it may hereafter acquire, in trust with the said second party, as Trustee, for the use and benefit of such persons as may purchase an interest therein; and

WHEREAS, the Corporation desires to issue to such purchasers a Certificate of such Corporation, to be known as "MUNICIPAL BOND COMPANY CONVERTIBLE CERTIFICATE OF OWNERSHIP IN MUNICIPAL BONDS" (hereinafter designated "certificate") certifying that the bearer or registered owner thereof is entitled, during the term of such certificate, to interest as stated therein

and as evidenced by coupons thereto attached, and is entitled, upon maturity and surrender of such certificate, to the proceeds and avails of such bonds to the extent of the principal sum mentioned in such certificate, or in lieu thereof to receive, upon such maturity, bonds of unpaid face value equal to such principal sum, and also certifying that such bearer or registered owner is entitled prior to maturity, upon demand and the surrender of such certificate, together with its unmatured coupons, to receive bonds of unpaid face value equal to the principal sum mentioned in such certificate; [30]

NOW, THEREFORE, in consideration of the premises, the said Trustee hereby agrees to accept from said Corporation, such bonds and to hold the same for the benefit of the holders of such certificates, in trust upon the terms and conditions and for the purposes herein set forth, to-wit:

#### Article I.

#### ISSUANCE AND CERTIFICATION OF CERTIFICATES:

Section 1. The certificates issued by said Corporation shall be known as "MUNICIPAL BOND COMPANY CONVERTIBLE CERTIFICATES OF OWNERSHIP IN MUNICIPAL BONDS," a specimen form of which is hereunto attached, made a part hereof and marked "Exhibit A".

Section 2. Said certificates shall be signed by the President or Vice-President of the Corporation

and the Secretary of the Corporation and the coupons thereto attached shall be signed by the Secretary of the Corporation, by a facsimile signature stamped, printed, lithographed or engraved upon said coupons.

Section 3. The par value of the certificates to be issued under "Series....." shall amount to..... Subsequent series may be in such amount as said Corporation may determine, but the total par value of such certificates outstanding at one time, covered by this Trust Agreement, shall not exceed the sum of .....

Section 4. The Trustee shall only be called upon to certify such certificates, as and when there shall have been deposited by said Corporation with said Trustee, subject to this Trust, bonds of the character hereinafter specified, equal in unpaid face value to **ONE HUNDRED AND TEN PER CENT (110%)** of the par value of the said certificates so certified.

Section 5. Said certificates, issued by said Corporation, may bear any date subsequent hereto and may be issued in Series payable at any given time and drawing interest at any rate per cent, provided, however, that no certificate shall be issued with a past due interest coupon attached thereto, which has not been cancelled, or with coupons attached thereto, calling for the payment of interest beyond the date of maturity of said certificate.

## Article II.

## DEPOSIT OF BONDS WITH TRUSTEE:

Section 1. The bonds to be deposited by the Corporation with said Trustee, under the provisions of this Trust Agreement, shall be Municipal Improvement Bonds, issued under special assessment laws of the State of California. Wherever the word "bond" or "bonds" is used in this agreement, such word shall indicate and refer solely and exclusively to Municipal Improvement Bonds issued under special assessment laws of the State of California.

Section 2. Whenever and as often as the Corporation shall desire to issue any certificates and to have the same certified by said Trustee, it shall deposit with said Trustee bonds in unpaid face value equal to ONE HUNDRED AND TEN PER CENT (110%) of the par value of the certificates then to be so certified, such bonds to bear interest at a rate not less than the rate mentioned in such [31] certificates; provided, however, that the Corporation may substitute a larger amount of bonds bearing a lower rate of interest in place of part or all of such bonds hereinabove required to be deposited, on condition that the amount of annual interest due on such bonds so deposited or substituted, shall, in the aggregate, equal or exceed the aggregate amount of annual interest mentioned in such certificates.

Section 3. Said Corporation shall transfer, assign and set over to said Trustee the absolute title to said bonds, to hold in accordance with the provi-

sions of this Trust Agreement, and shall execute any and all transfers, assignments or other instruments necessary to pass the title in said bonds to said Trustee.

### Article III.

#### WITHDRAWAL AND SUBSTITUTION OF BONDS:

Section 1. The Corporation, may when not in default on any of its covenants herein contained, and when no default exists in the payment of the principal or interest of any certificates at any time certified and outstanding hereunder, withdraw from time to time any of the bonds delivered to the Trustee hereunder, upon delivery to such Trustee of an equal amount in unpaid face value of bonds of the same character, provided that Section 2 of Article II hereof, shall apply to such new bonds so deposited.

Section 2. The Corporation, upon presentation by it to the Trustee for cancellation of any outstanding certificates, may withdraw bonds, the unpaid face value of which equals the par value of the certificates presented for cancellation, or in lieu thereof may have new certificates of the same par value certified by said Trustee.

Section 3. Said Corporation shall be entitled to the delivery from said Trustee of any bonds in the hands of said Trustee, over and above ONE HUNDRED AND TEN PER CENT (110%) of the par



value of certificates certified and outstanding, subject to the provisions of said Section 2 of Article II.

Section 4. Whenever and as often as the Trustee shall receive in cash the principal or any installment of the principal from any bond on deposit with said Trustee, said Trustee shall demand of said Corporation and said Corporation shall immediately deposit with said Trustee, bonds of unpaid face value equal to the amount of such cash, whereupon said Corporation shall be entitled to receive such cash from the hands of said Trustee.

#### Article IV.

### COLLECTION OF INSTALLMENTS UNDER BONDS:

Section 1. So long as said Bonds shall remain in the possession of said Trustee, no one shall be entitled to access thereto, except the said Trustee, and nothing herein contained or in the certificates issued by said Corporation shall entitle the holder thereof, so long as he does not surrender such certificate for cancellation in exchange for bonds, as herein provided, to the possession of any of such bonds or to any installment coupons thereto attached. [32]

Section 2. Said Trustee shall, on the second days of January and July in each year, cut off or cause to be cut off all installment coupons for interest then due on the bonds on deposit with said Trustee (the same being herein referred to as the avails



from such bonds), which interest-coupons said Trustee shall collect or cause to be collected for the benefit of this Trust. Said Trustee may deliver such interest-coupons to said Corporation as the Agent of said Trustee for the purpose of collecting same, and said Corporation agrees to make such collections. The ownership of such interest-coupons, after the same are delivered to said Corporation for collection and the money collected thereon by said Corporation, shall always belong to said Trustee for the benefit of this Trust. Said Corporation agrees to account to said Trustee on or before April first for all collections from interest-coupons maturing the 2nd day of January next preceding and on or before October first for all collections from interest-coupons maturing the second day of July next preceding. Said Corporation agrees to purchase from said Trustee on the first days of April and October in each year, all interest-coupons which have not theretofore been collected by either said Trustee or by said Corporation as the Agent of said Trustee, and said Corporation agrees to pay to said Trustee in cash the amount of the face value of all such interest coupons so purchased.

Section 3. Said Trustee shall, on the second day of January in each year, cut off or cause to be cut off all installment coupons of principal then due on the bonds on deposit with said Trustee, and sell such coupons to said Corporation in the manner herein mentioned. Likewise on the second day of July in each year, said Trustee shall take all matur-

ing serial bonds, and sell the same to said Corporation in the manner herein mentioned. Said Corporation agrees to purchase such maturing coupons of principal and such maturing serial bonds in the following manner: For each maturing coupon covering an installment of principal due on such bond or bonds, or for each maturing serial bond, the said Corporation shall deliver to said Trustee other bonds of an unpaid face value equal to the amount of such coupon or maturing serial bond, and shall be entitled to receive in exchange such coupons and serial bonds. The coupons covering installments of principal or serial bonds may be added to other like coupons or serial bonds and be received by said Corporation upon the delivery by said Corporation of one or more bonds, which in the aggregate in unpaid face value shall equal the aggregate of such serial bonds and coupons covering installments of principal.

Section 4. Nothing herein contained shall deprive the said Trustee of its right to collect the coupons attached to said bonds, or any serial bonds as and when the same mature, and in case of the failure of said Corporation to purchase said coupons or serial bonds as hereinabove provided, the said Trustee may proceed and collect said coupons or serial bonds for the benefit of this Trust.

Section 5. The bonds deposited with said Trustee by said Corporation in exchange for said installment coupons of principal or for maturing serial bonds, shall be held by said Trustee for the benefit

of the certificate holders, in place of the principal paid upon said bonds, to the end that said principal shall be immediately deemed to be reinvested in such new bonds so deposited by said Corporation, and the interest to accrue on such new bonds shall be deemed to be for the benefit of the holders of certificates then certified and outstanding, to the extent herein specified. [33]

Section 6. The intent and purpose of this Article, is that the Trustee shall collect the interest accruing from all bonds deposited by said Corporation under this Trust Agreement, for the benefit of this trust, and that as the principal under such bonds matures the same shall be immediately reinvested by said Trustee in like bonds, the interest from which shall likewise be for the benefit of this trust.

#### Article V.

#### DISTRIBUTION BY TRUSTEE OF COLLECTIONS:

Section 1. Out of the money that the said Trustee receives from the collection or sale of interest coupons on the bonds on deposit with said Trustee, the said Trustee shall, upon presentation of coupons as they mature from all certified and outstanding certificates, pay the amount due on such coupons and charge the same to said Trust, retaining the said coupons as the Trustee's voucher therefor, and out of the balance of the money so collected, after the Trustee has deducted its charges as herein specified, the said Trustee shall pay the

balance to the Corporation as income to said Corporation on the excess ten per cent of bonds deposited with said Trustee and as compensation to said Corporation in selling said certificates and in collecting the installments of principal and interest due under said bonds.

Section 2. Said Corporation shall likewise be entitled to any bonus or penalty received by said Trustee upon the payment of any bond on deposit with said Trustee.

#### Article VI.

#### PAYMENT OF CERTIFICATES AND COUPONS ON MATURITY:

Section 1. In order to pay to the holders of any maturing certificate or certificates the principal sum therein stated, said Trustee shall, on the day prior to the maturity of such certificates, sell such amount of bonds on deposit with said Trustee, the unpaid face value of which shall equal the principal sum stated in such maturing certificates, and said Corporation agrees, upon such sale, to purchase from said Trustee said bonds and to pay in cash therefor the unpaid face value thereof.

Section 2. Out of the avails received by said Trustee from the collection or sale of the interest-coupons on the bonds on deposit with said Trustee, the said Trustee shall pay upon presentation, all coupons as they mature from all certified and outstanding certificates.

Section 3. Out of the proceeds received by said Trustee from the sale of bonds to said Corporation as hereinabove provided, the Trustee shall, upon presentation for cancellation of any certificate or certificates at maturity, pay to the holder thereof the principal sum stated in such certificates.

Section 4. Nothing in this Article contained shall preclude the holder of any certificate from demanding and receiving at maturity, in lieu of cash, bonds of the unpaid face value equal to the principal sum stated in such certificate. [34]

#### Article VII.

### PRESENTATION OF CERTIFICATES PRIOR TO MATURITY:

Section 1. Upon presentation to the Trustee of any certified and outstanding certificate for cancellation prior to its maturity, and upon demand of the holder thereof for the delivery of bonds according to the terms of said certificate, the Trustee shall select from the bonds on deposit with said Trustee, such bonds as it may deem expedient, either as to maturity or as to security, of the unpaid face value equal in amount, as near as possible, to the par value of said certificates so surrendered.

Section 2. Accrued interest shall be computed on both the bonds so delivered and upon the certificate presented for cancellation, in arriving at the value of each respectively. In case the amount of the certificate and accrued interest cannot be cov-



ered exactly by bonds, the difference, if any, may be adjusted by the payment of the difference in cash, either by the Trustee to the certificate holder, or by the certificate holder to the Trustee, as the case may be, but in any event the certificate holder shall not be obliged to accept bonds of a greater unpaid face value than the certificate presented for cancellation. Any cash paid by said Trustee under this Section, shall be charged against whatever money may be due said Corporation under Article V of this Agreement. Any cash received by said Trustee under this Section, shall be immediately reinvested by said Trustee in bonds and said Corporation agrees to immediately deliver to said Trustee, in exchange for such cash, bonds of equal unpaid face value, and such bonds shall be held for the benefit of this Trust.

Section 3. Upon delivery by said Trustee to said certificate holder of such bonds and the acceptance of same by such certificate holder, the said Corporation shall be relieved from all guarantees under such certificate, and from all guarantees hereunder as to such bonds so delivered.

#### Article VIII.

#### TITLE TO BONDS:

Section 1. It is the intention of the parties hereto that the delivery to the purchaser thereof of a certified certificate, vests in the holder of such certificate the ownership of an amount in unpaid face value bonds, equal to the par value of the certificate,



subject to the implied agreement on the part of the purchaser of such certificate by the acceptance thereof, to allow the said bonds to remain in the hands of the Trustee for collection under the terms and conditions of this Trust, and also subject to the release and waiver by the holder thereof of all interest, bonuses, penalties or other sums collected by said Trustee upon the bonds so deposited with said Trustee, in excess of the principal sum mentioned in such certificate and the interest and the interest on such principal sum at the rate specified in said certificate.

Section 2. It is understood that the coupons attached to the certificate, represent the full amount of interest to which the holder thereof is entitled, in lieu of the interest accruing on the bonds, represented by said certificate, so long as the holder or holders thereof elect to allow said bonds to remain in the hands of the Trustee for collection. [35]

Section 3. The excess in face value of bonds over and above the par value of the certified and outstanding certificates, to-wit: ten per cent (10%), belongs to the Corporation, and the Trustee is authorized to hold the said excess during the life of this Trust, and to use the same, if necessary, in satisfying any obligations of the said Corporation to certificate holders or to said Trustee, arising through the operation of this Trust.

## Article IX.

## TRANSFER AND REGISTRATION OF CERTIFICATES:

Section 1. The certificates, as certified by said Trustee, may be transferred without endorsement (if not registered), and shall pass to the transferee all of the purchaser's right therein and the purchaser's title to the bonds deposited with said Trustee to cover such certificate, and the holder of such certificate shall have all the right, title and interest vested in the original purchaser thereof.

Section 2. The holder of any certificate may present the same to the Trustee for registration in the name of the holder thereof, whereupon said certificate so registered shall be payable upon maturity, as to principal, only to the registered holder thereof, upon surrender of such registered certificate, or such registered holder alone shall, prior to maturity, be entitled to demand and receive, upon surrender of such registered certificate, bonds deposited with said Trustee to cover such certificate. When such certificate is presented to said Trustee for registration, the said Trustee shall stamp thereon in substance the following: "This Certificate is registered in the name of . . . . . subject to the provisions of Trust Agreement mentioned herein." Such registration shall apply to the principal only and not to the interest coupons thereto attached. The fee of the Trustee for such registry shall be paid by the person presenting the certificate for

registration, and the Corporation shall not be liable for such fee.

Article X.

WARRANTIES AND COVENANTS OF CORPORATION:

Section 1. The Corporation, in joining in the execution of this Trust Agreement, hereby warrants that each and every bond deposited by said Corporation with said Trustee for the benefit of the holders of certificates, is a legal, valid and subsisting obligation and is secured by the property described therein and that the installments of principal and interest specified in each of such bonds will be paid as and when the same mature. Said Corporation further covenants that the aggregate unpaid principal of all bonds on deposit with said Trustee hereunder, shall at all times equal or be in excess of the par value of all certified and outstanding certificates, and that the value of the maturing coupons on such bonds shall at the date of the maturity of each and every coupon attached to such certificates, be equal to or in excess of the interest mentioned in such coupons attached to such certificates.

Section 2. In case any of such bonds be declared invalid or in case any installment of principal or interest is not paid according to the terms of any such bond, said Corporation agrees, to substitute for such bonds new valid and legal bonds of equal unpaid face value. [36]

Section 3. Said Corporation hereby covenants and agrees with said Trustee and with each and every holder of certified and outstanding certificates, to keep and perform every agreement on its part to be kept and performed hereunder, and each such certificate holder may enforce such agreements herein made by said Corporation.

Section 4. Said Corporation covenants and agrees that at the time of each and every deposit of bonds with said Trustee under the various Sections and Articles of this Trust Agreement, said Corporation will deliver into the hands of said Trustee the written opinion of a reputable attorney (such attorney to be satisfactory to said Trustee), certifying that such bonds are in the opinion of said attorney legally issued and are valid and subsisting liens upon the property described in such bonds. Until such written opinion, as to the validity of bonds offered for deposit, is filed with the Trustee, said Trustee shall refuse to accept any such bonds, so offered for deposit under the provisions hereof.

## Article XI

### RESPONSIBILITY OF TRUSTEE:

Section 1. The Trustee in accepting this Trust, shall assume no liability or responsibility for the due execution or the validity of any certificates issued by said Corporation, and the recitals herein and in the said certificates are made by and on behalf of the Corporation and the Trustee shall not

be responsible for the correctness thereof; nor shall the Trustee in any way be liable for any breach by the Corporation of its covenants and agreements herein contained, or for any other act or omission hereunder, excepting the Trustee's own wilful negligence, omission or intentional wrongdoing.

Section 2. The Trustee assumes no liability or responsibility other than the following: The due certification of the said certificates upon receipt of the requisite amount of bonds covering the same; the due and safe keeping and delivery of said bonds; the sale or collection of said bonds and the coupons attached thereto and the distribution of the proceeds and avails therefrom; the delivery of bonds to the holders of certificates upon surrender thereof prior to maturity, and the delivery of bonds or the proceeds from the sale of bonds to such certificate holders upon maturity of such certificates; the return of bonds to the Corporation in exchange for other bonds, or upon surrender of any certified and outstanding certificates; and a proper accounting of all moneys received by said Trustee.

Section 3. The Trustee shall be charged only with a fair and reasonable effort to obtain the best price for said bonds, in case of a sale thereof to others than said Corporation, and nothing contained herein shall be taken as binding the Trustee to any guarantee of the payment of the certificates or of any coupon attached thereto or the fulfillment of any agreement on the part of the Corporation,



or to any guarantee that the bonds deposited by said Corporation are legal, valid, or subsisting obligations or that such bonds and the interest thereon will be paid.

Section 4. It is distinctly understood that if any remedy exists because of the breach by said Corporation of any of its agreements herein or of any guarantee made to purchasers of said certificates, such remedy shall inure to the benefit of the holders of such certificates and may be enforced by them, and the Trustee shall be under no obligation hereunder to take any action relative thereto. [37]

Section 5. The Trustee shall be entitled to the following fees for its services:

For accepting the trust, the sum of.....

For certifying each certificate the sum of FIFTY CENTS (50c).

For paying maturing coupons and certificates ONE-FOURTH ( $\frac{1}{4}$ ) of ONE PER CENT (1%) of the cash paid thereon. No charge shall be made for the deposit of bonds in exchange for other bonds or for coupons covering installments of principal, or for the delivery of bonds upon surrender of certified and outstanding certificates, or for any other services rendered by said Trustee. The Trustee shall be entitled to be reimbursed for all proper and reasonable outlays of any sort or nature by it incurred in the discharge of its duties hereunder, and in case it is made a party to any actions involving this Trust or the bonds on deposit, it shall be entitled to court costs and reasonable attorney's



fees therein. The said Corporation hereby agrees to indemnify the Trustee for any costs, expenses or loss which it may suffer by reason of its position as Trustee, other than the ordinary expenses incurred by said Trustee in the regular administration of such Trust, payment for which ordinary expenses is herein agreed upon, and said Corporation agrees, upon demand, to pay such costs, expenses or loss which said Trustee may so suffer.

IN WITNESS WHEREOF, on the day and year first above written, .....and..... have caused this instrument to be executed by their respective officers thereunto duly authorized.

.....

By.....  
President

By.....  
Secretary

.....

By.....  
President

By.....  
Secretary

NO.

UNITED STATES OF AMERICA  
 STATE OF CALIFORNIA  
 MUNICIPAL BOND COMPANY  
 CONVERTIBLE CERTIFICATE OF  
 OWNERSHIP  
 IN MUNICIPAL IMPROVEMENT BONDS  
 SERIES.....[38]

FOR VALUE RECEIVED, ....., a corporation, (hereinafter referred to as the "Corporation"), does hereby sell and transfer to the purchaser of this certificate all of its rights, title and interest in Municipal Improvement Bonds issued under the special assessment laws of the State of California (hereinafter referred to as "Bonds"), of the unpaid face value of.....Dollars (.....), and said Corporation hereby certifies that said bonds with other like bonds are now deposited with.....(hereinafter referred to as the "Trustee"), as Trustee, to hold the same under a certain Trust Agreement, dated the.....day of.....and that the bearer hereof, or if this certificate be registered, the registered holder hereof, is entitled to participate in the proceeds and avails of such bonds, so deposited, to the extent of the principal sum of .....Dollars, payable from such proceeds and avails on the.....day of.....19.., with interest on said sum from the date hereof at the rate of .....Per Cent ( %) per annum, payable semi-annually on the first days of.....and.....in each year upon surrender of the coupons hereto

attached, as they severally mature, said principal and interest to be paid in lawful money of the United States at the office of said Trustee in Los Angeles, California; or the bearer hereof or such registered owner, is entitled at any time upon demand and the surrender of this certificate, together with its unmatured coupons, to said Trustee, to receive bonds of unpaid face value equal to the principal sum herein mentioned, the accrued interest to be adjusted as of date of delivery on both this certificate and the bonds so delivered.

This certificate is one of an issue of MUNICIPAL BOND COMPANY Convertible Certificate of Ownership in Municipal Improvement Bonds Series . . . . .all of like date and tenor, except variations necessary to express their numbers and denominations, issued and to be issued to an amount not exceeding in the aggregate the principal sum of Two Hundred Thousand (\$200,000) Dollars under said Series, pursuant to the provisions of and to be equally secured by the above mentioned Trust Agreement.

By the acceptance of this certificate, the bearer or registered owner hereof releases and waives all interest or other sums collected by said Trustee upon such bonds in excess of the principal sum herein mentioned and interest thereon at the rate herein specified, and does hereby agree to all of the terms of said Trust Agreement, which is hereby made a part hereof the same as though incorporated herein.

The corporation, for the purpose of better securing the distribution of the proceeds and avails of such bonds, has deposited with said Trustee bonds of unpaid face value equal to ONE HUNDRED AND TEN PER CENT (110%) of the principal sum herein stated. The Corporation hereby covenants that such percentage shall be maintained and that the principal and interest to become due upon said bonds, when and as the same matures, will be paid. Such covenant to continue as long as such bonds remain on deposit with said Trustee.

This certificate shall not be valid until certified by the Trustee.

IN WITNESS WHEREOF, MUNICIPAL BOND COMPANY has caused this certificate to be signed by its President or Vice-President, and its corporate seal to be hereto affixed and attested by its Secretary, and the coupons hereto attached to bear a facsimile signature of its Secretary, this..... day of.....19...

MUNICIPAL BOND COMPANY

By.....

President

Vice-President.

[39]

Attest:.....

Secretary.

(Form of Coupon)

MUNICIPAL BOND COMPANY CONVERT-  
IBLE CERTIFICATE OF OWNERSHIP IN  
MUNICIPAL IMPROVEMENT BONDS.

\$.....

On the.....day of.....19.., THE BEARER,  
ON SURRENDER HEREOF TO THE.....  
IS ENTITLED TO RECEIVE.....Dollars from  
the avails of Bonds on deposit with said Bank in  
Trust No....., according to the terms of such  
Trust, and the Undersigned covenants that the  
avails from such Bonds will be paid.

.....

By.....

Secretary.

Series.....

No.....

TRUSTEE'S CERTIFICATE

The undersigned hereby certifies that the within  
certificate and coupons attached, is one of the cer-  
tificates executed by MUNICIPAL BOND COM-  
PANY under an Agreement of Trust with this  
Corporation, dated.....

The Trustee further certifies that there has been  
deposited with it bonds of the character designated  
in said Trust Agreement, of unpaid face value to

the amount of 110% of the principal sum stated in the within certificate.

.....  
 .....

[40]

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[Title of Court and Cause.]

PETITION FOR REVIEW AND ASSIGN-  
MENTS OF ERROR.

To the Honorable Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

Now Comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and Clay C. Holmes, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

The petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

The respondent on review (hereinafter referred to as the taxpayer) is a corporation created under the laws of the State of California, with its principal place of business in Los Angeles, California.



Income tax returns for the years 1926, 1927 and 1928 were duly filed by the tax- [41] payer with the Collector of Internal Revenue for the Sixth District of California, and the office of the Collector of Internal Revenue for said Sixth District is located within the judicial Circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

## II.

The Commissioner determined deficiencies for the years in question and sent notices of deficiencies under the pertinent provisions of the Revenue Acts, as follows:

Date of Letter	Year	Deficiency
January 9, 1930	1926	\$2,086.02
January 9, 1930	1927	\$1,780.08
January 28, 1931	1928	\$1,815.31

Thereafter the taxpayer filed appeals from the above-mentioned notices of deficiency with the United States Board of Tax Appeals asserting error for the years 1926 to 1928 inclusive.

The hearing of said appeals was held October 2, 1933. On November 15, 1934 the Board promulgated its findings of fact and opinion in said appeals, and on January 9, 1935 the Board entered its decision and final order of redetermination in both appeals. The final order of the Board determined that there were deficiencies of \$786.76 and \$385.87 for the years 1926 and 1927 and no deficiency for the year 1928.

## III.

The Municipal Bond Company, a California Corporation, was organized to deal in municipal bonds. To finance its operations, it deposited bonds of a certain par value with a trustee and then sold to investors certificates of interest. [42]

The deficiencies in controversy resulted from the determination of the Commissioner that interest received by the taxpayer on certificates of ownership issued by the Municipal Bond Company constituted interest on obligations of that company, and as such was subject to Federal Income Tax. The taxpayer contended that the interest was exempt from tax and in this contention was sustained by the Board of Tax Appeals which held that the taxpayer became the beneficial owner of the municipal bonds deposited with the trustee and that interest received, through the trustee, was in payment of interest on those bonds and therefore, exempt from Federal Income Tax.

## IV.

The Commissioner says that in the record and proceedings before the Board of Tax Appeals and in the decision and final order of redetermination rendered and entered by the Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the Commissioner, and the Commissioner assigns the following errors and each of them, which he avers occurred in said record, proceedings, decision and final order of redetermination, and

upon which he relies to reverse said decision and final order of redetermination so rendered and entered by the Board of Tax Appeals, to wit:

1. The Board of Tax Appeals erred in holding and deciding that interest income received by the taxpayer was exempt from Federal Income Tax.

2. The Board of Tax Appeals erred in failing to hold and decide that the interest income received by the taxpayer was not exempt from Federal Income Tax. [43]

3. The Board of Tax Appeals erred in holding and deciding that a valid irrevocable trust in municipal bonds was created by the instruments executed by the parties under which taxpayer acquired Municipal Bond Company's certificates.

4. The Board of Tax Appeals erred in failing to hold and decide that a valid irrevocable trust in municipal bonds was not created by the instruments executed by the parties under which taxpayer acquired Municipal Bond Company's certificates.

5. The Board of Tax Appeals erred in holding and deciding that the interest received by taxpayer from certificates of ownership of the Municipal Bond Company was interest exempt from Federal Income Tax.

6. The Board of Tax Appeals erred in failing to hold and decide that the interest received by taxpayer from certificates of ownership of the Municipal Bond Company was not interest exempt from Federal Income Tax.

7. The Board of Tax Appeals erred in holding and deciding that upon the purchase of certificates of ownership of the Municipal Bond Company taxpayer became the beneficial owner of the deposited bonds.

8. The Board of Tax Appeals erred in failing to find and hold that upon the purchase of certificates of ownership of the Municipal Bond Company taxpayer did not become the beneficial owner of the deposited bonds.

9. The Board of Tax Appeals erred in finding and holding for the taxpayer.

10. The Board of Tax Appeals erred in failing to find and hold for the Commissioner. [44]

11. The Board of Tax Appeals erred in finding and holding that there were deficiencies of \$786.78 and \$385.87 for the years 1926 and 1927 respectively, and no deficiency for the year 1928.

12. The Board of Tax Appeals erred in failing to find and hold that there were deficiencies of \$2,086.02, \$1,780.08 and \$1,815.31 for the years 1926, 1927 and 1928 respectively.

WHEREFORE, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the clerk of said Court for filing, and that appropriate

action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN,  
Assistant Attorney General.

(Signed) ROBERT H. JACKSON,  
Assistant General Counsel for the Bureau  
of Internal Revenue.

Of Counsel:

CLAY C. HOLMES,  
Special Attorney, Bureau of Internal Revenue.  
[45]

United States of America  
District of Columbia—ss.

CLAY C. HOLMES, being duly sworn, says that he is a Special Attorney in the Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Sgd) CLAY C. HOLMES.

Sworn and subscribed to before me this 25th day of March, 1935.

(Sgd) GEORGE W. KREIS,  
Notary Public.

My commission expires Nov. 16, 1937. [46]



[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW.

To:

Joseph D. Brady, Esq.,  
Roman Building,  
Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of March, 1935, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 25th day of March, 1935.

(Signed) ROBERT H. JACKSON,  
Assistant General Counsel for the Bureau  
of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29 day of March, 1935.

(Sgd) JOSEPH D. BRADY,  
Attorney for Respondent on Review.

[Endorsed]: Filed Apr. 8, 1935. [47]



[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW.

To:

Carson Estate Company,  
1119 Bank of America Bldg.,  
Los Angeles, California.

Corrected address: 815 Los Angeles Stock Exchange Office Bldg., Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of March, 1935, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 25th day of March, 1935.

(Signed) ROBERT H. JACKSON,

Assistant General Counsel for the Bureau  
of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review

and assignments of error mentioned therein, is hereby acknowledged this 29 day of March, 1935.

(Sgd) CARSON ESTATE CO.,

By H. H. COTTON, Secy.

Respondent on Review.

[Endorsed]: Filed Apr. 8, 1935. [48]

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[Title of Court and Cause.]

#### AFFIDAVIT OF SERVICE BY MAIL.

Wave Millar, being duly sworn, deposes and says that she is over the age of 18 and is not a party to the above-entitled proceeding.

That on April 2, 1935, at 12:15 P.M., she placed a notice of filing petition for review and a copy of petition for review, in the above-entitled proceeding in a franked envelope and addressed said envelope to Mr. Harvey Stevenson, 1009 Security Building, 5th & Spring Streets, Los Angeles, California; that she thereupon caused a registry stamp to be affixed to said envelope and deposited the same in the United States mails at Station No. 24 of the United States Post Office, Los Angeles, California.

WAVE MILLAR.

Subscribed and sworn to before me this Third day of April, 1935.

[Seal]

T. G. ALBRIGHT,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Oct. 22, 1936.

[Endorsed]: Filed Apr. 8, 1935. [49]

[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board:
  - (a) Petitions, including the annexed copies of the deficiency letters.
  - (b) Answers.
3. Opinion and decision of the Board.
4. Stipulation filed with the Board May 10, 1930.
5. Stipulation of Facts and attached Exhibit A.
6. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.
7. This praecipe.

(Signed) ROBERT H. JACKSON,  
Assistant General Counsel for the Bureau  
of Internal Revenue.

Service of a copy of the within praecipec is hereby admitted this 6th day of May, 1935.

JOSEPH D. BRADY,  
Attorney for Respondent.

[Endorsed]: Filed May 14, 1935. [50]

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[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 50, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipec in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 14th day of June, 1935.

[Seal]

B. D. GAMBLE,  
Clerk, United States Board of Tax Appeals.

[Endorsed]: No. 7900. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Carson Estate Company, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed June 21, 1935.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of  
Appeals for the Ninth Circuit.



